
(2005) 06 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1223 of 2005

Prof. M.S. Chaturvedi

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 02-06-2005

Acts Referred:

Constitution of India, 1950 — Article 225

Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (2005) 4 RLW 2769 : (2005) 4 WLC 258

Hon'ble Judges : V.K. Bali, J; Harbans Lal, J

Bench : Division Bench

Advocate : Ashok Gaur, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—This D.B. Special Appeal W under Article 225 of the Constitution of India read with Section 18, Rajasthan High Court Ordinance, 1949 has been filed against interim order dated 26.5.2005 passed by the learned Single Judge in S.B. Civil Writ Petition No. 9089/2002. The impugned order reads as under:

"After having considered entire material on record, in view of controversies and issues raised on behalf of both the sides and further the final relief, as prayed in the writ petition should not be granted by an interim order, in the facts and circumstances, I find no justification for continuing the interim orders passed in favour of the petitioner earlier. The same is hereby vacated.

The stay application stands dismissed of accordingly."

2. Learned Counsel appearing for the appellant has apprised us that when the matter came up for hearing before the learned Single Judge on 27.11.2003, interim stay was granted to the appellant after hearing all the concerned parties. Learned Single Judge, at that stage, had heard arguments on merits of the case and passed a speaking order which reads as follows:

"The petitioner was appointed as Dean of Faculty of Social Science vide order dated 27.9.2002. The petitioner joined on the post on 27.9.2002. On the next date i.e., 28.9.2002 the petitioner was further nominated as Member of Syndicate being Dean of Faculty of Social Science. Subsequently, with the change of Vice Chancellor the above orders dated 27.9.2002 and 28.9.2002 were kept in abeyance vide order dated 27.11.2002.

This Court while issuing notice stayed the operation of the order dated 27.11.2002 qua the petitioner vide order dated 9.12.2002 and the petitioner was allowed to work as Dean of Faculty of Social Science. However, by yet another order dated 11.12.2002 both the orders dated 27.9.2002 as also the order dated 28.9.2002 have been withdrawn.

Be that as it may, in view of the order passed on 9.12.2002 the petitioner is still continuing as Dean of Faculty of Social Science.

After having considered the entire facts and circumstances of the case and without making any further observations on the merits of the case, the operation of the orders dated 11.12.2002 so far petitioner is concerned, is stayed. Apart from allowing the petitioner to work as a Dean of Faculty of Social Science, the petitioner shall also be allowed to work as Member of the Syndicate in pursuance to order dated 28.9.2002."

3. Against the order aforesaid, respondents carried appeal bearing No. 39/2004 University of Rajasthan and Anr. v. Prof. Madhukar Shyam Chaturvedi and the Division Bench, while dealing with the appeal, did not vary/modify/vacate order dated 27.11.2003. Division Bench passed the following order on 24.2.2004:

"This appeal is directed against the interim order passed by the learned Single Judge.

Having heard learned Counsel for the parties, we are of the opinion that the writ petition pending before the learned Single Judge should be heard expeditiously. Accordingly, we request the learned Single Judge to hear the writ petition expeditiously since it relates to the academic matter. It will be open to the learned Counsel for the parties to raise such pleas as may be available to them under law.

With the aforesaid observation, the appeal is disposed of."

4. The matter then came up for hearing before the learned Single Judge on 22.7.2004 when the following order was passed:

"Put up for final disposal at this stage in the month of August, 2004 along with connected case."

5. When once again the matter came up for hearing before the learned Single Judge on 16.12.2004, the following order was passed:

"Interim order passed on 27.11.2003 to continue till final disposal of the writ

petition"

6. Respondents moved an application for early hearing on 11.3.2005 on which following order was passed on 1.4.2005:

"Heard. The application for early hearing is allowed.

Put up for admission/hearing on 25.4.2005 along with connected case."

7. Learned Counsel further informs us that the application for early hearing, mention whereof has been made above, also contained prayer for modification of the stay but while disposing of the application, no orders with regard to modification of stay were passed by the learned Single Judge. In fact, on 16.12.2004, learned Single Judge, rather confirmed the stay to last till disposal of the writ petition. When, however, the matter came up for hearing on 26.5.2005 which, in the circumstances, could only be hearing on the writ petition and not hearing on the stay application, the impugned order reproduced in the earlier part of the judgment was passed.

8. The facts, as detailed above, dealing with the progress of the case and the interim orders passed from time to time, are not in dispute. Learned Counsel appearing for the appellant vehemently contends that once the learned Single Judge had granted stay which was not varied even by the appellate Bench on an appeal preferred by the respondents and when further learned Single Judge had even confirmed the stay and when while hearing application for early hearing which also contained prayer for modification of stay, the learned Single Judge chose not to modify stay order, there was no occasion for the learned Single Judge to vacate the stay order and that too by passing a non- speaking and cryptic order. Learned Counsel for the respondents, however, contends that it is always open to the court to modify or even vacate stay orders and no law enjoins that once stay is granted, the same cannot be varied, modified or vacated. If at any time, the court may come to a conclusion that continuance of stay is not justified, it can vacate the same.

9. We have heard learned Counsel appearing for the parties and with their assistance, examined records of the case.

10. The record of the case will bear testimony to the fact that after hearing arguments detailed order granting interim relief to the appellant was passed on 27.11.2003 and the appeal carried against order aforesaid met with no favourable results. During the course of hearing before the learned Single Judge, when the matter came up for hearing on various dates, as mentioned above, the learned Single Judge did not think it desirable to vacate the stay granted by him. In fact, interim order dated 27.11.2003 was confirmed on the date mentioned above. We are of the considered view that once learned Single Judge had applied his mind and granted interim relief to the writ petitioner, which was not varied even in appeal carried against the said order, and when thereafter learned Single Judge still confirmed the interim order and so much so when even application for

early hearing was filed with further prayer for modification of the stay as well, it was not thought expedient to vacate the stay; there was no occasion at all, whatsoever to vacate the stay which has been done by the impugned order dated 26.5.2005. The matter was pending for a long time and in tune with the earlier orders passed by the learned Single Judge for disposal of the case, it would have been expedient to dispose of the case as such. There cannot be any dispute that the Court can always vacate interim orders if at any time, it may consider non-jurisdiction in continuing such orders. To adhere to its interim orders when continuance of the same may be wholly unjustified is no judicial heroism but while doing so, reasons for varying, modifying or vacating earlier orders have necessarily to be given. Assuming that there was fresh material brought on the records, as is sought to be made out by the learned Counsel representing the respondents, learned Single Judge in that case ought to have made a mention of such material and given reasons to come to the conclusion that continuance of interim orders was not justified. What we rather find from the impugned order is that stay has been vacated by inter alia observing that the relief which may ultimately be granted should not be granted by way of interim relief. In matters such as one in hand, whereas the respondents could indeed urge that what the writ petitioner was to get by way of interim relief was also the ultimate relief sought by him, at the same time, the writ petitioner could also urge that if interim relief was not granted, the petition would become infructuous. No doubt, in the initial interim order reproduced above, this aspect of the matter has not been considered, even though two views, as mentioned above, could well be expressed at that stage also. Be that as it may, the view that interim relief which could be the ultimate relief as well, should not be granted, was available at the time when interim order was passed in favour of the writ petitioner. The learned Single Judge however chose to grant stay presumably for the reason that if no stay was to be granted, the petition itself would become infructuous. We do not wish to dilate on this point any further. We, however observe that in case the learned Single Judge thought it expedient, appropriate and in the interest of justice to vacate the order, earlier granted by it and which was confirmed by the appellate court as well, reasons for the same ought to have been mentioned in the order. Material placed on record later in point of time i.e. Later than when interim order, mentioned above, was passed, if any, ought to have been mentioned in the order. A citizen is entitled to know the basis or the reasons which might have prevailed with the Court in vacating the interim order/directions continuing for a long time. The impugned order is indeed non-speaking and the only reason given therein to vacate the earlier order does not appear to be justified.

11. In view of the discussion made above, we set aside the impugned order dated 26.5.2005 with liberty to the respondents to re-agitate the matter on the basis of fresh material, if available, and further if the same may justify vacation of the interim stay, even though we are of the view that instead of dealing with stay matter, which will certainly entail going into the merits of the case, it would

be more appropriate to decide the writ petition itself.

12. In the result, appeal is allowed. The impugned order dated 26.5.2005, as mentioned above, is set aside.

13. While disposing of appeal Appeal No. 39/2004 preferred by the respondents against the interim orders dated 27.11.2003, the Division Bench then seized of the matter, had made a request to the learned Single Judge to hear the writ petition expeditiously since it related to academic matter. We repeat and reiterate the same request to the learned Single Judge.